IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 528 OF 2006
IN
NOTICE OF MOTION NO. 2751 OF 2006
IN
S.C. SUIT NO.8293 OF 1989

Smt.Hajrabai d/o.Haroon Mistry. ...Appellant
V/s.
Smt.Sarabai w/o. Haji Ismail and
d/o. Haroon Ismail Mistry & Ors. ...Respondents

Shri A.J. Rizvi for Appellant.
Ms.Gauri Godse for Respondent No.3 to 11.
Mr.D.V. Deokar, 1st Asstt.to Court Receiver with
Mr.Bhogaonkar, IInd Asstt.to Court Receiver present.
C.A. of Respondent No.1 is present.

CORAM : A.M. KHANWILKAR, J.

DATED : JULY 25, 2006

P.C. :-

. Heard Counsel for the parties.

. Admit. Constituted Attorney of respondent no.1 is present in Court. He waives notice for respondent No.1. Ms.Godse waives notice for respondents no.3 to 11. Assurance is given that vakalatnama on behalf of the said Respondents will be filed within two weeks from today.

2. As short question is involved, this appeal is

heard forthwith, by consent.

3. This appeal is directed against the order passed by the trial Court refusing to grant ad-interim order as prayed by the appellant in SC Suit No.8293/1989. The Court below has recorded that the suit is already dismissed on 13th September, 2005. This is the only reason which can be discerned from the impugned order refusing to grant ad-interim relief as prayed by the appellant.

4. Taking overall view of the matter, however, as it is not in dispute that respondent is in possession of the suit property since 1989, in the interest of justice, as the applications taken out by the appellant before the lower court being Notice of Motion and Chamber Summons are already made returnable for hearing on 11th August, 2006, the parties shall maintain status quo with regard to the suit property till the consideration of the said applications. This shall not be construed as expression of any opinion either way on the merits of the contentions. Both Notice of Motion

and Chamber Summons be decided on its own merits in accordance with law. All questions in that behalf are left open.

5. The lower court shall ensure that Chamber Summons and Notice of Motion taken out by the appellant are heard and decided on 11th August, 2006 when the same are scheduled for hearing or so soon thereafter.

6. This observation is made on the basis of assurance given by the parties through Counsel as well as Constituted Attorney of the respondent no.1 that they shall extend full cooperation for early disposal of the said proceedings. Reply affidavit to the Chamber Summons and Notice of Motion be filed on or before 31st July, 2006 and rejoinder affidavit, if any, to be filed on or before 7th August, 2006.

7. Pleadings shall be filed in advance in the Registry of the City Civil Court. This is to ensure that lower court can proceed with the hearing of the Chamber Summons and Notice of Motion on 11th August,

2006 as the same is notified for hearing on the said date. Till the said proceedings are disposed of, the Court Receiver shall maintain status quo in regard to suit property as of today.

8. Appeal disposed of on the above terms. No order as to costs.

9. It is once again made clear that objections available to the respondents regarding the maintainability of the Chamber Summons and Notice of Motion including one of locus of the appellant, will have to be decided on its own merits.

. Issuance of certified copy is expedited.

(A.M. KHANWILKAR, J.)